

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: Gray, et al.

Examiner: Ingvaldstad, Bennett

Serial No: 10/611,454

Art Group: 2623

Filing Date: June 30, 2003

Docket No: ATT030075

Confirm No: 1616

Title: Interactive Content with Enhanced Network Operator Control

Date: 02/20/2009

Mail Stop Appeal Brief - Patents

Commissioner for Patents

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REPLY TO EXAMINER'S ANSWER PURSUANT TO 37 C.F.R. § 41.41(a)(1)

This Reply is filed in response to the Examiner's Answer mailed January 23, 2009.

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A. Status of the Claims

The present patent application includes claims 1-21 which currently stand rejected. The appellant is requesting the Board of Appeals to reverse the rejection of claims 1-21. Appellant explicitly identifies claims 1-21 as the claims on appeal.

B. Grounds of rejection to be reviewed on Appeal

1. Claims 1-2, 5-9, 12-16 and 19-21 were under 35 USC § 102(e) as being anticipated by Omoigui (U.S. Publication No. 2005/0086687).

2. Claims 3-4, 10-11 and 17-18 were rejected under 35 USC § 103 (a) as being unpatentable over Omoigui (U.S. Publication No. 2005/0086687) in view of Agnihotri (U.S. Publication No. 2003/0163828).

C. Argument:

1. **The rejection of claims 1-2, 5-9, 12-16 and 19-21 under 35 USC § 102(e) as being anticipated by Omoigui (U.S. Publication No. 2005/0086687) must be reversed.**

In the Examiner's Answer, the Response to Argument raises several new points that the Appellant wishes to address in conjunction with this Reply.

a. The specification supports searching for alternative content that is related to content being viewed when the search is conducted.

The Examiner asserts that that the specification fails to specifically describe that a user is viewing content at the same time the search is conducted. The Appellant respectfully disagrees. In particular, the Appellant points out paragraphs [0046] and [0071] of the specification that state:

[0046] First, at decision block 400, the system determines whether a hot key signal should be added to the current content. This determination may be made at head-end and data center 201. For example, hot key generation portion 315 may perform a search of electronic program guide or other programming information to find related content. If head-end and data center 201 is connected to the Internet, hot key generation portion 315 may extend this search to web sites. That is, a search of Internet sites may be performed based on information related to content detected from an electronic program guide or from another search. For example, a search of electronic program guide information may detect a professional football game including the names of the teams. A search may then be done on the rest of the electronic program guide for another professional football game or other sports. Additionally, a search of Internet sites may be done for sites related to professional football or the teams involved.

[0071] At decision block 705 a determination is made as to whether the hot key signal is relevant to the particular user. Since numerous hot key

signals may be transmitted at any particular time, the signals may be filtered before being presented to the user. Such filtering may be based on any number of possible algorithms and criteria. For example, only hot key signals related to a channel that is presently being viewed may be considered relevant. Another criteria for determining relevance of a hot key signal may be choices of content types or genres which have been selected by the user. Regardless of the algorithm or criteria used to judge relevance, if the hot key signal is determined at decision block 705 to not be relevant, no further processing is performed. [Emphasis added]

The “search for alternative content” can take place in conjunction with the determination to inform a user of the availability of alternative content as stated in paragraph [0046]. Further the specification presents that this determination can be made based on a channel that is presently being viewed. In other portions of the specification, the term “being viewed” is used.

[0022] FIG. 1B illustrates an example of receiving a hot key. In this example, the user is tuned to the same video program 101 on television 100 as in the previous example of FIG. 1A. However, in this example an icon 103 or other graphic has been displayed to indicate to the user that a hot key has been received. The hot key indicates that alternate content is available for the user's consumption. According to one embodiment of the present invention, the alternate content may be in the form of another video program with content related to the video program 101 being viewed by the user.

[0025] Regardless of the exact operation used to accept the alternate content, FIG. 1D illustrates redirecting a user to alternate content responsive to the hot key being accepted. According to one embodiment of the present invention, the alternate content may be another video program with content related to the video program 101 being viewed by the user. Therefore, television 100 in FIG. 1D illustrates an alternate video program 107 being displayed. According to one embodiment of the present invention, the alternate video program 107 may present content related to the original content the user was viewing. For example, if the user was viewing a television program related to travel, the alternate video program may also be related to travel.

A definition for the term “being” as presented in Merriam Webster’s Online Dictionary is “present”. (see [http://www.merriam-webster.com/dictionary/being\[2\]](http://www.merriam-webster.com/dictionary/being[2])). As such, the term “being viewed” itself implies present tense and means the same as “presently being viewed” that is used elsewhere. Appellant submits that the specification provides adequate and clear support for “searching for alternative content that is related to content being viewed when the search is conducted.”

b. The claims should be interpreted to cover “determining” that is based on searching for alternative content that is related to content being viewed when the search is conducted.

The Examiner asserts that Appellant’s claims do not cover searching for subject matter while programs are still being viewed. As discussed above, this reading is supported by the specification. Further, as discussed above, the term “being viewed” implies a present tense and means “presently being viewed” as disclosed elsewhere in the specification.

c. Omoigui does not disclose searching for alternative content that is related to content being viewed when the search is conducted.

The Examiner believes that the Appellant has mischaracterized Omoigui’s FIGs. 13 – 15. Appellant respectfully disagrees with the Examiner’s interpretation of Omoigui. In particular, the Examiner states, that the events of FIG. 13 may be updated and correlated to

become viewing habits data which are used to search for alternative programs during a later FIG. 15 time period. Omoigui presents no such teaching. Omoigui states in paragraphs [0099] and [0100] that each of the three time periods of FIG. 13 – 15 are analyzed collectively. Further as admitted by the Examiner discussion of paragraph [0097] on Page 11 of Examiner's Answer, recommended alternative content is based on past viewing habits. As such, Omoigui simply does not teach an analysis of 3rd down/4th down event of FIG. 13 during the time frame of FIG. 15 that includes another 4th down event. These events are analyzed together, at a later time, to establish a viewing pattern.

The Examiner disputes Appellants interpretation of FIGs. 13-15 that time flows from left to right in each graph. Appellant agrees with the Examiner that time flows from FIG. 13 to FIG. 14 and to FIG. 15. Appellant disagrees with the Examiner's interpretation that FIGs. 13 – 15 indicate that the viewer is viewing three programs simultaneously. First, Omoigui characterizes each as a "time frame", indicating some period of time. Second, each figure indicates a bar that apparently has a height indicating how long each program was viewed during each time frame. During the time period of FIG. 13, CNN was watched the most (see paragraph [0013]) and has the correspondingly higher bar. If, as the Examiner asserts, the programs were watched simultaneously, each program would be watched the same amount during each time frame. Appellant asserts that the proper interpretation of FIGs. 13 – 15 is that the viewer is channel surfing within each time frame. In the first time frame the viewer watches a portion of Monday night football, then changes the channel to National Geographic Explorer for a short period of time, and then watches

CNN for a longer period. A temporal relationship exists within each time frame, as well as between each time frame.

In any case, Omoigui's system analyzes past viewing habits and has no way of knowing what is currently being viewed. In particular, each time frame includes not one, but three different viewings that encompass a time frame with multiple channel changes. Omoigui's system cannot search for alternative content based on subject matter of content being viewed by the user when the search is conducted. By analyzing only past viewings, it cannot consider the subject matter currently being viewed.

2. The rejection of claims 3-4, 10-11 and 17-18 under 35 USC § 103 (a) as being unpatentable over Omoigui (U.S. Publication No. 2005/0086687) in view of Agnihotri (U.S. Publication No. 2003/0163828) must be reversed.

In particular, while claims 3-4, 10-11 and 17-18 were rejected based on the combination of Omoigui and Agnihotri (U.S. Publication No. 2003/0163828), the addition of Agnihotri to the combination does not correct the deficiency of Omoigui as discussed above. Agnihotri further does not disclose the search for alternative content based on subject matter of content being viewed by the user when the search is conducted. Appellant respectfully requests that this basis for the rejection of claims 3-4, 10-11 and 17-18 be reversed

D. Conclusions

For the above-provided reasons, the Appellants respectfully request that all of the rejections of the Final Office Action be overturned and that the claims in the present application be allowed to issue.

RESPECTFULLY SUBMITTED,

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